

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

BERNARD STRONG

Case No. _____

Plaintiff,

vs.

**NOTICE OF REMOVAL
AND
JURY DEMAND**

SCHENK TRUCKING, INC. and WILLIAM
DECKER,

Defendants.

COME NOW Defendants, Schenk Trucking, Inc. and William Decker (hereinafter, when referred to collectively, "Defendants"), and remove this action from the District Court of Sheridan County, Nebraska to the United States District Court for the District of Nebraska. Removal is proper under the following grounds:

1. On July 29, 2011, Plaintiff Bernard Strong ("Plaintiff") commenced this action in the District Court of Sheridan County, Nebraska and said action is still pending. In accordance with 28 U.S.C. § 1446(a), a true and correct copy of Plaintiff's Complaint and other filings/documents is attached hereto and marked, collectively, as Exhibit A.

2. In accordance with 28 U.S.C. §§ 1332(a), complete diversity exists between Plaintiff and all Defendants. Plaintiff is a citizen of Rushville, Nebraska. (See Exhibit A, Complaint, ¶1). Defendant Schenk Trucking, Inc. is a South Dakota corporation with its principal place of business in South Dakota. (Id.). Defendant William Decker is a citizen of South Dakota. (Id.).

3. In accordance with 28 U.S.C. § 1332(a), the amount in controversy, exclusive of interest and costs, exceeds the sum of \$75,000.00.

a. Under Eighth Circuit law, where "it does not appear to a legal certainty that

the claim for relief is for less than the statutorily prescribed jurisdictional amount," the amount in controversy requirement is met and removal is proper. Kopp v. Kopp, 280 F.3d 883, 885 (8th Cir. 2002) (quotation omitted); see also In-Custody Int'l Corp. v. Taper, No. 8:07-cv-176, 2007 WL 2068117, at *1 (D. Neb. July 18, 2007) (same).

b. In this case, Plaintiff claims property damage totaling at least \$15,161.60. A true and correct copy of a November 29, 2010 Demand Letter, requesting payment in that amount, is attached as Exhibit B. Defendant also currently has notice of claimed medical bills and related expenses totaling \$8,602.70. In addition to those claimed medical and related expenses, Plaintiff's counsel indicated in a January 7, 2011 Demand Letter that Plaintiff needed back surgery as a result of the accident. A true and correct copy of counsel's January 7, 2011 Demand Letter is attached as Exhibit C.

c. Defendants currently have notice of claimed property damage and alleged medical expenses totaling \$23,764.30. Moreover, the Complaint alleges that Plaintiff sustained physical injuries, past and future medical expenses, past and future mental distress, property damage and related economic losses. (Exhibit A, Complaint, ¶19). The Complaint also indicates Plaintiff ultimately had surgery as a result of the accident. (Id. at ¶11). The Complaint further asserts claims on behalf of Plaintiff's wife, for loss of consortium and lost income. (Id. at ¶11). As evidenced by Plaintiff's alleged injuries, Plaintiff's other alleged losses and the claims he asserts on behalf of his wife, a factfinder could legally conclude Plaintiff's damages exceed \$75,000.00. Because it does not appear to a legal certainty that Plaintiff's claim is for less than \$75,000.00, the amount in controversy requirement is satisfied. See Kopp, 280 F.3d at 885.

4. Venue is proper in this district under 28 U.S.C. § 1391(a), because a substantial part of the events giving rise to the claims in this action occurred in this judicial district. (See Complaint, ¶¶ 2-5).

5. Removal of this action to the United States District Court for the District of Nebraska is proper under 28 U.S.C. § 1441(a), because this Court has original jurisdiction over this action under § 1332(a) and this notice has been filed within thirty (30) days after receipt of the initial pleadings by Defendants.

6. A notice of the filing of this Notice of Removal and Jury Demand is being filed contemporaneously herewith in the District Court of Sheridan County, Nebraska.

7. There are no matters pending in the District Court of Sheridan County, Nebraska that will currently require resolution by this Court.

WHEREFORE, Defendants Schenk Trucking, Inc. and William Decker remove this action from the District Court of Sheridan County, Nebraska, to the United States District Court for the District of Nebraska, and request that either Omaha, Nebraska or Lincoln, Nebraska be designated as the place of trial.

JURY DEMAND

Defendants hereby demand a jury trial on all issues raised in the Complaint.

SCHENK TRUCKING, INC. and
WILLIAM DECKER,
Defendants

By /s/ David C. Mullin
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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of August, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/EMF system, which sent notification of such filing to the following:

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